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Biden names EPA regional heads, Ag officials

Kevin Bogardus, Marc Heller, E&E News

<https://subscriber.politicopro.com/article/eenews/2021/12/10/biden-names-epa-regional-heads-ag-officials-284172>

President Biden yesterday named several top-level appointees for federal posts across the country, including regional administrators at EPA.

The White House announced administrators for EPA Regions 6, 7 and 9.

Earthea Nance was named EPA Region 6 administrator. The region, its main office in Dallas, oversees agency operations in Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Nance is a Texas Southern University professor focusing on urban planning and environmental policy. She also was the city of New Orleans' director of disaster mitigation and planning, and holds a doctoral degree in environmental engineering from Stanford University as well as master's and bachelor's degrees from the University of California, Davis.

Earlier this year, environmental leaders recommended Nance along with others for the Region 6 job in a letter to Administrator Michael Regan.

Adrian Shelley, director of Public Citizen's Texas office, said in a statement that Nance is "a champion for environmental justice" and "a strong choice" for the region.

"From her humanitarian work in New Orleans after Hurricane Katrina, to lending her expertise in flooding and disaster recovery after Hurricane Harvey, Dr. Nance puts communities and people first in her work," Shelley said, who also signed onto the letter supporting Nance and others for the post.

The Biden administration also named Meg McCollister for EPA Region 7 administrator.

Born in Kansas, McCollister earned her bachelor's degree from the University of Kansas and a Juris Doctorate from the University of Missouri, Kansas City's School of Law. She later moved to California and served on the board of directors for Sonoma County Conservation Action. McCollister has since returned to the Midwest, working as an adviser on environmental and social initiatives.

"Meg brings deep experience in community organizing and stakeholder engagement. I know she will ensure voices throughout Region 7 are heard on key issues and I'm very excited to welcome her to the team," Regan said in a statement.

Region 7 is headquartered in Lenexa, Kan., and handles EPA business in Iowa, Kansas, Missouri and Nebraska.

Martha Guzman was named EPA Region 9 administrator. Its main office is in San Francisco, and it manages

agency operations in Arizona, California, Hawaii, Nevada and the Pacific Islands.

For the last five years, Guzman served as a commissioner at the California Public Utilities Commission, appointed by then-Gov. Jerry Brown (D). Prior to that, she was deputy legislative affairs secretary in the governor's office and has also worked for the California Rural Legal Assistance Foundation and the United Farm Workers.

"I am honored to be appointed by President Biden to serve as Administrator of EPA Region 9 under the leadership of Administrator Regan. And I am grateful for the opportunity to work with the resilient staff at Region 9 as we tackle the chronic and emerging environmental issues in our communities," Guzman said in a statement.

An EPA regional administrator is a coveted appointment during every administration. Lawmakers, environmental organizations and other interested parties get behind their chosen candidates and lobby the White House and EPA to help secure them the job (Greenwire, July 20).

EPA has 10 regional administrators, which do not require Senate confirmation. Before yesterday's announcement, the administration had named five of them at the agency (Greenwire, Nov. 19).

EPA now only has to fill its Boston and Seattle offices with an appointed regional administrator.

Department of Agriculture

The White House also announced four appointments to regional positions at the Department of Agriculture.

The administration said it had picked Jim Barber, a fifth-generation farmer in New York, to be that state's executive director for the Farm Service Agency, which oversees many basic farm programs at the local level. He held the same position during the Obama administration.

Barber has been...

Biden executive order pledges better federal customer service

Michael Doyle, E&E News

<https://subscriber.politicopro.com/article/eenews/2021/12/13/biden-executive-order-pledges-better-federal-customer-service-284229>

The Biden administration today packaged together administrative reforms designed, officials say, to transform "the federal customer experience" and improve "service delivery" in areas like creating an easier system to get permits to use wildlife refuges.

Through a new executive order to be signed by President Biden this afternoon, 36 "customer experience improvement commitments" are being extended across 17 federal agencies.

"As we ask the government to do more, we can ensure the government does it better," Neera Tanden, a senior White House adviser, told reporters this morning, adding that "we looked at the points of greatest friction for people with their government."

Tanden said "the plan expectation here is to use existing resources" while making improvements.

Tribal communities will be able to expect more streamlined and integrated grants application processes, “rather than having to provide information over and over again to the Federal government and navigate across multiple agency websites” under the plan, according to the White House.

The Fish and Wildlife Service also will provide more of its service transactions online.

The plan’s specific targets for improvement include services provided to veterans, taxpayers, retirees and Medicare recipients, among others.

"Americans will be able to renew their passports securely online, saving time from having to wait and the effort and cost required to print, go to a post office, and use a paper check," the White House said in one example, while "passengers will have shorter security and check-in lines at airports due to increased use of technologies, like new security machines and computers with advanced screening features."

Among the changes for FWS include providing more accessible access to special use permits for National Wildlife Refuge System locations.

The special use permits are required to undertake commercial, recreational and research activities on refuges. These can range from haying and grazing to one-time events, like guiding and commercial filming.

Currently, according to the FWS website, “prospective permit holders may fill out the corresponding application, print it, sign it, and return it to the refuge for processing. The permit is not valid until approved and signed by a refuge official.”

The agency further notes that “each National Wildlife Refuge has a somewhat individual Special Use Permit process.”

The improvements will also target what FWS called “several high-volume application forms” required for individuals and businesses that import, export or re-export animals, plants and their products internationally.

“These transactions currently can take weeks or even months to process, and can require multiple paper forms to be mailed,” the White House said.

Application information is stored in the Law Enforcement Management Information System (LEMIS), which includes forms filed by applicants for the importation or exportation of fish and wildlife. It's a lot of data.

“These imports include everything from python-skin boots, to parrots and turtles destined for the pet trade ... to lions killed as hunting trophies, as well as zoo and scientific specimens,” the Center for Biological Diversity noted in one lawsuit.

Applicants to import or export wildlife products currently complete FWS Forms 3-200-3a or 3-200-3b.

In September, FWS solicited public comment on a proposal to automate the forms through what the agency called a “new eLicense system” that will “simplify the application process and give the applicant the ability to pay online through Pay.gov via credit card or direct bank payment.”

“This will reduce the number of applicants requesting multiple licenses for the same business and will reduce the number of bad addresses and bounced checks that we receive,” the agency stated.

As part of the plan, the administration designated the National Park Service, FWS, the Bureau of Indian Affairs

and the Bureau of Trust Fund Administration as...

EPA Launches Series Of New Rules To Strengthen Major Policy Items

Stuart Parker, Inside EPA

<https://insideepa.com/daily-news/epa-launches-series-new-rules-strengthen-major-policy-items>

EPA is launching a series of new rulemakings to address major policy issues across its media areas, including new Clean Air Act emissions standards for power plants, a more-permanent measure defining the reach of the Clean Water Act and new rules governing perfluorinated chemicals, according to the agency's just-released unified agenda.

In addition, the agency is also setting new deadlines for its closely watched chemical risk management rules under the Toxic Substances Control Act (TSCA), according to the agenda, released Dec. 10.

The agency has also set new deadlines for its pending climate rules for power plants, motor vehicles and oil-and-gas drilling operations, though those include new timelines that stretch out toward the end of President Joe Biden's current four-year term.

EPA's air office is crafting some of the most significant measures, including plans to revise its flagship mercury and air toxics standards (MATS) in June, with a view toward finalizing a new and potentially stricter rule by April of 2023. That is separate from its forthcoming proposal to reinstate the legal underpinning of MATS.

According to a new entry in EPA's just-updated Unified Agenda of regulatory actions, as many had predicted the agency will conduct a separate review of the Trump EPA's risk-and-technology review (RTR) of MATS, rather than combine it with its rule now under White House Office of Management and Budget (OMB) review that is expected to reinstate a finding that it is "appropriate and necessary" (A&N) to regulate power plant air toxics emissions.

The Trump EPA reversed an Obama-era finding that it is A&N to regulate power plants under Clean Air Act section 112's air toxics provisions, saying that the Obama agency had failed to properly account for costs as directed by the Supreme Court on remand.

But the Biden administration is expected to again find it appropriate to regulate, based on an updated and much fuller accounting of costs and benefits than the Trump EPA relied on. The A&N finding is a legal prerequisite to MATS itself, and its absence leaves the rule vulnerable to legal challenge, supporters of the rule say. EPA's action on the finding is now titled "Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding."

The Trump EPA also conducted an RTR that found health risks from the sector are acceptable, and found no new control technologies available that would warrant tighter standards.

In another major item appearing for the first time in the agenda, EPA says it will in March propose a rule to help states meet their "good neighbor" obligations to mitigate interstate emissions of ozone-forming pollution with regard to its 2015 ozone national ambient air quality standards (NAAQS). States must curb their "significant contribution" to problems attaining NAAQS in other states.

EPA has left it to states to write state implementation plans (SIPs) to meet the requirement, but many of the plans are either missing, or EPA has failed to approve or deny them, and the agency is under litigation pressure

to issue necessary determinations.

The action will “determine whether and to what extent ozone-precursor emissions reductions are required to eliminate significant contribution or interference with maintenance from upwind states that are linked to air quality problems in other states for the 2015 8-hour ozone NAAQS. For states that EPA determines to be linked to a downwind nonattainment or maintenance receptor, EPA would conduct further analysis to determine what (if any) additional emissions controls are required in such states and develop an enforceable program for implementation of such controls,” EPA says.

WOTUS & TSCA

EPA and the Army Corps of Engineers are also pursuing an additional rule defining waters of the United States (WOTUS), beyond the interim rule they recently proposed.

The proposed rule, which the Unified Agenda refers to as Rule 1, interprets WOTUS...

17% of people live near toxic release facilities—here's how it breaks down by state

N/A, Gwinnett Daily Post

https://www.gwinnettdaily.com/17-of-people-live-near-toxic-release-facilities-heres-how-it-breaks-down-by-state/image_48fe7ac4-6373-5aa4-bede-2352ea229b95.html

Communities may not even be aware of it, but corporate sites across the U.S are releasing toxins into the surrounding land, air, and water. After an accidental release from a chemical plant in West Virginia chemical plant in 1985, Congress passed the Emergency Planning and Community Right-to-Know Act. The act established the EPA Toxic Release Inventory (TRI), which provides citizens with crucial information on what toxins are being emitted in their areas and what companies are doing the emitting. The TRI has allowed certain states to put emission-curbing legislation in place to safeguard public health: for instance, when Massachusetts Gov. Charlie Baker passed legislation in 2019 allocating \$2.4 billion to climate change resilience.

At the moment, the EPA's TRI program recognizes 770 chemicals, and any site that manufactures or uses these chemicals at above-average levels qualifies for listing in the TRI. Chemicals described by the TRI as “toxic” are known to cause cancer or other negative health issues, as well as adverse effects on the environment. Facilities report the amounts of chemicals they release annually to the TRI, with the “release” of a chemical meaning that it is “emitted to the air or water, or placed in some type of land disposal.”

The facilities in the TRI are usually quite large and deal in electricity, metals, mining, chemicals, or hazardous waste. However, not all toxic chemicals used by corporations are listed in the TRI, meaning that its inventory of toxin-emitting sites is not exhaustive.

Stacker analyzed data from the EPA Toxic Release Inventory and the U.S. Census Bureau's five-year American Community Survey to identify the percent of each state's population living in census tracts with toxic release sites, as well as the corporations and facilities responsible for emitting the highest amounts of toxins annually. These results reflect the last full year of data, 2020, from the 2020 National Analysis Dataset released in October 2021.

Read on to discover where the most toxins are being released in your state, what part of your environment they may be polluting, and who is being affected.

Biden orders government to prioritise purchase of PFAS-free products

Julia John, Chemical Watch

<https://chemicalwatch.com/388809/biden-orders-government-to-prioritise-purchase-of-pfas-free-products>

US President Joe Biden has issued an executive order asking national agencies to focus on buying articles free from per- and polyfluoroalkyl substance (PFAS) ingredients to boost sustainability nationwide and spur innovation toward safer alternatives.

The 8 December move could prompt the deselection of the persistent substance class in textiles, firefighting foams, food contact materials (FCMs) and many other government-bought items. It answers a push for executive-branch action from members of Congress, nonprofits and states with years-long concerns about the compounds' ecological and human health effects.

According to the White House, Mr Biden wants the nation's \$650bn annual procurement activities to lean toward "sustainable products", including those without added PFASs. He instructed officials to promote environmental stewardship, incentivise markets for these goods by looking for recyclable or biobased options and maximise environmental benefits and cost efficiency via lifecycle cost analysis.

"By transforming how the federal government builds, buys and manages its assets and operations, the federal government will support the growth of America's clean energy and clean technology industries, while accelerating America's progress toward achieving a carbon pollution-free electricity sector by 2035," President Biden said.

At the state level, Michigan recently emerged as the first to see a similar executive order.

Driving change in the market

The federal action follows a request from more than 60 US Representatives to meet environmental justice and pollution-related campaign commitments through "a specific purchasing directive to avoid products made with harmful PFASs".

According to Congresswoman Debbie Dingell (D-Michigan), who spearheaded the 6 December letter to the White House Council for Environmental Quality (CEQ), the policy "is critical to the long-term success of this country and to the health of generations".

Scott Faber, senior vice president of government affairs at the Environmental Working Group (EWG), called this "a historic moment". The US president "is using the buying power of the world's biggest shopper to not only protect federal workers, but to drive enormous changes in the marketplace", he told Chemical Watch.

However, the American Chemistry Council (ACC) told Chemical Watch PFASs "provide significant support for sustainability efforts" since they help create semiconductors, fuel cells, batteries, solar panels and other articles. "Restricting the procurement of products containing PFASs could harm the administration's efforts to bolster our economy and harm the supply chain," it said.

NDAA provision dropped

Mr Faber noted that presidential measures are easier to roll back than statutes. "It's more likely that – although PFASs is a bipartisan issue – another administration might reverse this directive, than it is that Congress will reverse a directive to agencies," he said.

But statutory restrictions may still be out of reach.

The latest draft of the 2022 National Defense Authorisation Act (NDAA) omits a ban on military purchases of a wide variety of PFAS-containing items included in the House of Representatives' earlier version of the broad spending bill.

The 7 December compromise bill, approved by the Houser 363-70, would instead require a Government Accountability Office (GAO) investigation into Department of Defense (DoD) procurement of articles using any of seven PFASs – PFNA, PFOA, PFHxA, PFOS, PFHxS, PFBS and GenX. It would only cover cleaners, furniture and floor waxes, car wax and window treatments, and apparel for which the substances' use is not essential.

The Senate is currently finalising the legislation, which must clear that chamber and be signed by Mr Biden to become law. The purchasing mandate's removal eliminates a major obstacle, as the White House had opposed it due to inadequate testing capacity and substitute availability.

Massachusetts Narrows 'PFAS' Rules' Scope, Highlighting Definition Clash

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsc-news/massachusetts-narrows-pfas-rules-scope-highlighting-definition-clash>

Highlighting uncertainty over how many per- and polyfluoroalkyl substances (PFAS) will be subject to voluntary "class-based" rules, Massachusetts is narrowing its list of PFAS subject to use-reduction policies, adopting a definition that one scientist says is in line with EPA's even as the agency is under pressure to adopt a broader one.

The state's Administrative Council on Toxics Use Reduction Dec. 7 voted unanimously "based upon public comment recommendations," to apply the state's recently adopted rules governing PFAS "not otherwise listed" (NOL) -- meaning all chemicals in the class not already added to the program individually -- only to "certain" substances based on their chemical structures.

Rainer Lohmann, director of the University of Rhode Island's Superfund Research Center project on Sources, Transport, Exposure and Effects of PFAS (STEEP), says the new definition aligns with the one EPA used in its proposed Toxic Substances Control Act (TSCA) reporting rule for the chemicals, but is more limited than the definition used by the international Organisation for Economic Co-operation and Development (OECD).

"The new OECD definition is much more encompassing," Lohmann tells Inside TSCA.

But EPA is itself facing calls to broaden the reporting rule's definitional 333reach, including through a House-passed amendment to the fiscal year 2022 defense authorization bill that would have forced it to adopt a more expansive definition of PFAS -- though that provision was blocked in the Senate and ultimately stripped from consensus legislation.

The contrast underlines an ongoing debate over exactly how to define the category of PFAS -- a crucial question for efforts to regulate the entire class at once rather than addressing individual chemicals, either one by one or in subgroups.

EPA itself has acknowledged that "There is no precisely clear definition of what constitutes a PFAS substance," noting that "various lists" of perfluorinated chemicals take contradictory positions on whether to include "partially fluorinated substances, polymers, and ill-defined reaction products."

And that question is becoming more crucial as momentum builds for class-based approaches to PFAS. In addition to EPA's proposed TSCA rule, several states have adopted policies seeking to limit use of all substances in the group.

Those include Massachusetts' move to list the chemicals under its Toxic Use Reduction Act (TURA) program - which does not directly limit chemical uses but instead sets several requirements designed to encourage voluntary adoption of substitutes -- as well as more direct bans in California, Vermont, Maine and elsewhere.

But if those authorities apply different definitions of PFAS, it would compound the patchwork nature of those rules that industry is already lamenting as a failure of TSCA preemption.

Massachusetts' Toxic Use Reduction Institute (TURI) said in a Dec. 10 release that following the council's vote, "facilities in Massachusetts that are subject to TURA and use large amounts of PFAS are expected to track use beginning in 2022 and report use of PFAS by July 1, 2023."

Chemical Structures

Massachusetts' new PFAS policy defines the class as including all chemicals "that contain a perfluoroalkyl moiety with three or more carbons (e.g., --CnF2n--, n = 3; or CF3--CnF2n-- , n=2) or a perfluoroalkylether moiety with two or more carbons (e.g., --CnF2nOCmF2m- or --CnF2nOCmFm--, n and m = 1), wherein for the example structures shown, the dash (--) is not a bond to a hydrogen and may represent a straight or branched structure, that are not otherwise listed."

That change "reflects that the listed category contains only the certain PFAS considered by the [program's] Science Advisory Board and Administrative Council rather than all PFAS NOL are included in the category," the council said in its announcement of the meeting.

Lohmann tells Inside TSCA, "Chemically, this definition makes sense - TURA basically excludes C1 and C2...

Eyeing sector-wide push, groups urge REI to drop PFAS apparel

N/A, Inside TSCA

<https://insideepa.com/tsca-takes/eyeing-sector-wide-push-groups-urge-rei-drop-pfas-apparel>

Environmentalists are calling on the leading outdoor recreation chain REI to stop making or selling products that contain per- and polyfluoroalkyl substances (PFAS), arguing that the firm's prominent status in its industry means such a move would prompt its competitors to make similar pledges to adopt safer alternatives.

"With a long history of putting people and the planet over profits, especially with its #optoutside campaign, we admire REI for its strong values and passion for the outdoor environment. That's exactly why we believe REI should lead the outdoor apparel industry in a bold transition away from the entire class of toxic PFAS 'forever chemicals,'" more than 100 national and local-scale groups write in a Dec. 8 letter to REI President and CEO Eric Artz.

And Safer Chemicals Healthy Families (SCHF), one of the groups that organized the effort, writes in a Dec. 8 blog post that REI is positioned to "lead the outdoor apparel industry in a bold transition away from the entire class" of PFAS.

SCHF and allied groups have long pressed private companies to voluntarily drop PFAS from their products, but

the groups' letter also notes that several states have either passed or are considering broad bans on the chemicals, including Washington, where REI is based.

"It is prudent for REI to get out in front of these regulations and phase PFAS out on an aggressive timeline," the letter says.

It is signed by more than 100 national and local environmental, public health and consumer advocacy groups, marking the latest step in a campaign to get REI to bar PFAS-containing products from its sales that the groups launched last month.

The new campaign follows similar efforts that environmentalists and others have used to pressure companies on PFAS, as well as efforts to have Lowes, Home Depot and other hardware retailers drop sales of paint-stripping products containing the acutely toxic solvent methylene chloride.

"With great market power comes great responsibility. As a company committed to sustainability and one of the biggest outdoor retailers in the U.S., REI has a responsibility to lead the industry away from these toxic chemicals," the blog post says.

Officials underestimating 'forever chemicals' lurking in US food: scientists

Sharon Udasin, The Hill

<https://thehill.com/policy/equilibrium-sustainability/585436-officials-underestimating-forever-chemicals-lurking-in-us>

The American food supply is likely riddled with far more dangerous toxins than the average consumer would anticipate, and scientists say they lack sufficient, streamlined data about the "forever chemicals" lurking in food packaging and farmlands.

While state and federal agencies have improved data collection for PFAS — perfluoroalkyl and polyfluoroalkyl substances — in drinking water, only "anecdotal evidence" exists for other exposure sources, such as ingestion of food, inhalation of dust and dermal uptake, Elsie Sunderland, an environmental chemistry professor at Harvard University, told the Subcommittees on Environment and Research and Technology earlier this week.

"While we've made progress in understanding the contribution of drinking water as an exposure source, the relative importance of these other sources is basically not understood," Sunderland said in a Friday interview with The Hill.

PFAS include thousands of toxic compounds linked to kidney, liver, immunological, developmental and reproductive issues. While these substances are most known for contaminating groundwater via firefighting foam, they are also key ingredients in food packaging and household products like nonstick pans, toys, makeup and waterproof apparel.

Sunderland recalled how she and a student were running samples from a contaminated groundwater site, when they decided to test PFAS levels in the compostable food packaging they had with them. They found that the levels were "higher than all the contaminated groundwater."

Scientists say that PFAS-coated packaging is not just problematic for the consumer of that particular meal.

"When you go to throw your compostable food packaging in the compost pile, you're contaminating your

compost, which you then send to these big places to be composted,” Abigail Hendershott, executive director of the Michigan PFAS Action Response Team (MPART), told The Hill.

The E.U. has deemed the dietary intake of PFAS so problematic that several countries have banned it in food packaging, Sunderland said in her testimony. By contrast, data on PFAS exposures in the U.S. food supply are minimal and analytical methods in research are limited — likely leading to an underestimation of exposures.

“Europe is just a little bit ahead and they have more of a precautionary approach,” Sunderland told The Hill. “Here we’re really into quantitative risk assessment and demonstrating that something causes an appreciable harm before we regulate.”

But that type of “reactive management strategy” doesn’t work well when targeting chemicals like PFAS, since scientists cannot “catch up” with the thousands of chemicals in the class, according to Sunderland.

The Food and Drug Administration recently undertook a “Total Diet Study” that looked at PFAS content in nationally distributed processed foods, finding that 164 of the 167 foods tested had no detectable levels of PFAS. The FDA’s acting commissioner, Janet Woodcock, said in a statement that the administration would work to understand PFAS concentrations in foods, aiming “to ensure the U.S. food supply continues to be among the safest in the world.”

Sunderland said she found this study problematic due to its small size and lack of specific information about the samples. The sample size was not representative of the U.S. population, she continued, noting that if the findings were multiplied by the amount of food that people eat, the results not meet the safety levels established by the European Food Safety Authority.

“I also think there’s a bit of a mixed mandate that FDA has because they sell food, but they also are charged with food safety,” Sunderland said.

The murkiness regarding levels of PFAS in the nation’s food supply is not limited to packaging. In many states, like Maine and Michigan, high levels of PFAS have also been found on farmlands, where mixtures of biosolids and industrial sludge have been used as fertilizer, according to Sunderland’s testimony.

“Michigan...

Bipartisan House group defends herbicides in plea to EPA

Marc Heller, E&E News

<https://subscriber.politicopro.com/article/eenews/2021/12/13/bipartisan-house-group-defends-herbicides-in-plea-to-epa-284188>

Moderate Democrats and some Republicans on the House Agriculture Committee are asking EPA to delay a closer look at the health and environmental impacts of chemical weedkillers.

In a letter to EPA Administrator Michael Regan, Rep. Abigail Spanberger (D-Va.) and others said revising the registrations of herbicides now could make supply-chain challenges worse just as farmers are making plans for spring planting.

The lawmakers wrote: “During this period of economic uncertainty caused by the ongoing COVID-19 pandemic, taking steps to restrict the number of herbicides that farmers can utilize could seriously exacerbate

existing strains on supply chains, leading to shortages, increased demand for already supply-constrained alternatives, price hikes, and significant losses directly to farmers who have already purchased herbicide and seed for the upcoming 2022 growing season."

In addition to Spanberger and committee Chair David Scott (D-Ga.), Republican Reps. Steven Palazzo of Mississippi and Bob Gibbs of Ohio signed the letter, along with a handful of other Democrats.

The lawmakers mentioned recent price increases for herbicides such as glyphosate and 2,4-D. They also mentioned dicamba, which has a reputation for drifting away from the fields where it's intended, killing soybeans or other crops that haven't been bred to tolerate it — but which is a key management tool for farmers who plant the resistant varieties.

About 64 million acres of dicamba-tolerant soybeans and cotton were planted in 2020, they said, adding that farmers would need significant advance notice to transition to other seed types if EPA were to revise the registration.

The Biden administration has promised a closer look at a number of pesticides that received favorable treatment under the Trump administration, potentially putting new limits on their use.

"In light of these concerns, we strongly urge the EPA to reconsider any new herbicide registration restrictions at this time," the lawmakers said, adding that the agency should give farmers plenty of advance notice if revisions are on the way so they can find alternative crop treatments.

While the lawmakers said they appreciate the environmental considerations EPA makes in registering herbicides, limiting their use can also discourage farmers from using conservation practices like reduced tillage, which might otherwise favor weeds.

Farm groups praised the move, but a senior scientist at the Center for Biological Diversity, Nathan Donley, called the letter "the same old garbage we constantly see from the Farm Bureau, pesticide companies and their lackeys in Congress."

He added, "These groups constantly use the 'sky is falling' approach to scare, intimidate and otherwise bully regulators into doing nothing of value. There is not one mention in this letter about the people whose livelihoods have been decimated by herbicide drift or the countless natural areas, backyard gardens and public spaces that have been scorched."

The Trump administration veered from principles of scientific integrity in extending dicamba's registration, EPA's Office of Inspector General said earlier this year. Some research has tied the chemical to liver cancer and other cancers (Greenwire, May 24).

The House Agriculture members' approach on weedkillers contrasts with moves by some Senate Democrats, including Cory Booker of New Jersey, to more tightly restrict farm chemicals.

Monsanto to plead guilty to illegal pesticide use in Hawaii

Associated Press Staff, E&E News

<https://subscriber.politicopro.com/article/eenews/2021/12/10/monsanto-to-plead-guilty-to-illegal-pesticide-use-in-hawaii-284164>

The Monsanto agrochemical company said yesterday in court documents that it has agreed to plead guilty to illegally using and storing pesticides in Hawaii and will pay \$12 million in fines.

The court filing said Monsanto agreed to plead guilty to 30 environmental crimes after workers were allowed to go into corn fields last year on Oahu after glufosinate ammonium-based product named Forfeit 280 was sprayed on the fields.

Federal law prohibits people from entering areas where the chemical is sprayed within six days of application.

The company will also plead guilty to two felony crimes related to the storage of a banned chemical on Maui, according to the Department of Justice.

"Monsanto is a serial violator of federal environmental laws," U.S. Attorney Tracy Wilkison said in a statement. "The company repeatedly violated laws related to highly regulated chemicals, exposing people to pesticides that can cause serious health problems."

Monsanto faces three years of probation in addition to the fines and continue a "comprehensive environmental compliance program" overseen by a third-party auditor, said the statement from the U.S Attorney's Office in Los Angeles, which is handling the prosecution.

"The defendant in this case failed to follow regulations governing the storage of hazardous wastes and the application of pesticides, putting people and the environment at risk," said Scot Adair, special agent in charge of EPA's criminal enforcement program in Hawaii, which conducted the investigation.

Monsanto apologized in a statement but said no adverse health effects had been reported to company officials in association with the violations.

"The conduct at issue in the agreement is unacceptable and contrary to the values and policies of the company, and we sincerely regret it," said Darren Wallis, Monsanto's vice president of communications for North America crop science.

The company said it will change procedures and training.

The Department of Justice statement said Monsanto has agreed that company representatives will appear in court to enter guilty pleas for the offenses "in the near future."

Emerging Viral Pathogens Guidance Extended

Lisa Whitley Coleman, EHS Daily Advisor

<https://ehsdailyadvisor.blr.com/2021/12/emerging-viral-pathogens-guidance-extended/>

The EPA announced November 19 it is "indefinitely extending COVID-19 activation of the emerging viral pathogens (EVP) guidance for antimicrobial pesticides. EPA's EVP guidance for antimicrobial pesticides is a part of the federal government's pandemic preparedness, allowing manufacturers to provide the Agency with data, even in advance of an outbreak, demonstrating that their products are effective against hard-to-kill viruses."

EVP guidance allows "permitted registrants with a pre-qualified 'emerging viral pathogen designation' to

include a statement indicating efficacy ‘against viruses similar to SARS-CoV-2’ and authorize use against the novel coronavirus,” according to a November 23, 2021, Beveridge & Diamond P.C. article in Lexology.

Substances claiming to kill microorganisms are known as antimicrobial pesticides, which must first be registered with the EPA under the Federal Fungicide, Insecticide, and Rodenticide Act (FIFRA).

“EPA considers antimicrobial pesticides intended to control microorganisms that pose a threat to human health to be ‘public health’ products, and any claims for use against a specific public health pathogen must be supported by efficacy data reviewed by EPA,” adds the Beveridge & Diamond article. “Under the Pesticide Registration Improvement Extension Act of 2018 (PRIA-4), EPA’s review of a request to add a new use to an existing registered antimicrobial pesticide can take a year or more.”

When new viral pathogens emerge, “antimicrobial product manufacturers must both test their products’ efficacy against the emerging pathogen and navigate the lengthy EPA review process,” states a bulletin published by Taft Law. “This process poses significant hurdles to ensuring the public’s timely access to EPA-approved products that can be used to combat the rapid spread of emerging viruses like SARS-CoV-2.”

With these hurdles in mind, the EPA first extended its EVP guidance to SARS-CoV-2 at the onset of the COVID-19 pandemic in January 2020.

“Under this guidance, antimicrobial pesticide manufacturers can support COVID-19 claims by providing EPA with data that shows that their products are effective against harder-to-kill viruses,” the Taft Law article continues. “Upon EPA approval, these manufacturers could make claims for their products’ use and efficacy against the novel coronavirus for up to 24 months after the viral outbreak began.”

Normally, regulations require manufacturers with registered products to remove EVP claims within 24 months of the original outbreak notification.

“With EPA’s latest announcement, registrants may continue to include SARS-CoV-2 EVP claims in their consumer messaging,” Beveridge & Diamond notes. “EPA will provide six months’ notice to registrants before inactivating the EVP guidance for SARS-CoV-2.”

Supreme Court asks U.S. government for views on Bayer weedkiller case

Lawrence Hurley and Ludwig Burger, KFGO

<https://kfgo.com/2021/12/13/supreme-court-asks-u-s-government-for-views-on-bayer-weedkiller-case/>

The U.S. Supreme Court on Monday asked President Joe Biden’s administration for its views on whether the justices should hear Bayer AG’s bid to dismiss claims by customers who contend its Roundup weedkiller causes cancer, as the company seeks to avoid potentially billions of dollars in damages.

Bayer in August filed a petition <https://www.reuters.com/business/healthcare-pharmaceuticals/bayer-takes-legal-battle-over-glyphosate-cancer-claims-us-supreme-court-2021-08-16> with the Supreme Court to reverse a lower court decision that upheld \$25 million in damages awarded to California resident Edwin Hardeman, a Roundup user who blamed his cancer on the German pharmaceutical and chemical giant’s glyphosate-based weedkillers. The Supreme Court’s decision on whether to take up the matter is being closely watched as Bayer maneuvers to limit its legal liability in thousands of cases.

U.S. Solicitor General Elizabeth Prelogar in the coming months is due to file a brief expressing the

administration's views.

Bayer has lost three appeals <https://www.reuters.com/business/healthcare-pharmaceuticals/bayer-loses-third-appeals-case-over-glyphosate-weedkiller-2021-08-10> against verdicts that sided with users of Roundup, awarding them tens of millions of dollars each. The company has pinned hopes for relief on the conservative-majority Supreme Court, which has a reputation for being pro-business.

Bayer asked the Supreme Court to review the verdict in Hardeman's case, which was upheld <https://www.reuters.com/business/healthcare-pharmaceuticals/us-appeals-court-upholds-verdict-that-bayers-roundup-caused-cancer-2021-05-14> by the San Francisco-based 9th U.S. Circuit Court of Appeals in May. Hardeman had regularly used Roundup for 26 years at his home in northern California before being diagnosed with a form of non-Hodgkin's lymphoma.

There are more than 25,000 related claims Bayer has not settled yet.

Bayer, which also makes aspirin, Yasmin birth-control pills and the stroke prevention drug Xarelto among other products, has argued that the cancer claims over Roundup and its active ingredient glyphosate go against sound science and product clearance from the U.S. Environmental Protection Agency. The EPA has upheld guidance that glyphosate is not carcinogenic and not a risk to public health when used as indicated on the label.

Bayer has said it should not be penalized for marketing a product deemed safe by the EPA and on which the agency would not allow a cancer warning to be printed.

The lawsuits against Bayer have said the company should have warned customers of the alleged cancer risk. Bayer wants the Supreme Court to find that the EPA label approval under a federal law called the Federal Insecticide, Fungicide and Rodenticide Act preempts the "failure to warn" claims brought under state law.

Roundup-related lawsuits have dogged Bayer since it acquired the brand as part of its \$63 billion purchase of agricultural seeds and pesticides maker Monsanto in 2018.

Monsanto Enters Plea Deal for Illegally Using Pesticide at Corn Growing Fields in Hawai'i

N/A, Maui Now

<https://mauinow.com/2021/12/09/monsanto-enters-plea-deal-for-illegally-using-pesticide-at-corn-growing-fields-in-hawaii/>

Monsanto Company agreed to plead guilty to 30 environmental crimes related to the use of a pesticide on corn fields in Hawaii, according to information released today by the US Department of Justice and the US Environmental Protection Agency. The agreement is detailed in court documents filed today in Hawaii.

The pesticide, glufosinate ammonium-based product sold under the brand name Forfeit 280, was used in 2020 on corn fields on Oahu. "Monsanto allowed workers to enter the fields during a six-day 'restricted-entry interval' after the product was applied," according to an EPA press release.

According to the EPA and Justice Department, the company further agreed to plead guilty to two other charges related to the storage of a banned pesticide that were the subject of a 2019 Deferred Prosecution Agreement.

The plea agreement calls for Monsanto to serve three years of probation, pay a total of \$12 million and continue for another three years a comprehensive environmental compliance program that includes third-party auditor.

Of that payment, half will go towards community service payments in Hawaii. Four Hawaii agencies will receive \$1.5 million payments:

The Department of Agriculture, Pesticide Use Revolving Fund – Pesticide Disposal Program/Pesticide Safety Training;

the Department of the Attorney General, Criminal Justice/Investigations Division;

the Department of Health, Environmental Management Division, to support environmental-health programs; and

the Department of Land and Natural Resources, Division of Aquatic Resources.

Maui Now reached out to Monsanto for comment on the plea. In a statement, Darren Wallis, Vice President of Communications, North America Crop Science said:

ARTICLE CONTINUES BELOW AD

“The conduct at issue in the agreement is unacceptable and contrary to the values and policies of the company, and we sincerely regret it. To ensure proper compliance, the company is taking significant remedial actions to enhance its controls, including strengthening its policies and procedures that now require a robust and multi-step approval process to authorize the use of pesticides on fields in Hawaii, and enhancing its training. Taken together, we are confident these measures will ensure legal compliance and will maintain our high safety standards.”

The US Department of Justice states: “As a result of the conduct in which Monsanto allowed workers on 30 occasions to enter fields sprayed with Forfeit 280 during the REI, the company violated a 2019 DPA related to the storage of a banned pesticide. According to the documents filed today, Monsanto will plead guilty to two felony charges filed in 2019 that the government would have dismissed if the company had complied with federal law.”

“In conjunction with the DPA related to the two felony charges of illegally storing an acute hazardous waste, Monsanto pleaded guilty in early 2020 to a misdemeanor offense of unlawfully spraying a banned pesticide – specifically methyl parathion, the active ingredient in PennCap-M – on research crops at one of its facilities on Maui,” according to the USDOJ.

ARTICLE CONTINUES BELOW AD

US Attorney Tracy L. Wilkison called Monsanto “a serial violator of federal environmental laws,” saying, “The company repeatedly violated laws related to highly regulated chemicals, exposing people to pesticides that can cause serious health problems.”

Monsanto maintains: “No adverse health effects associated with the Hawaii matters have been reported to the company.”

The company outlined details on the remedial actions it is taking to further enhance compliance controls. This includes:

Strengthening companywide pesticide use procedures, including procedures to ensure that all U.S. sites compare the labels of the products in their inventory with the US EPA’s Pesticide Product Label System, conduct additional in season pre-use label comparisons, and require site-lead review and approval of pesticide use plans. Monsanto reaches agreement...

Pesticides Incorporated into Fabrics and Housewares Are Hazardous, and Not Adequately Regulated

N/A, Beyond Pesticides

<https://beyondpesticides.org/dailynewsblog/2021/12/pesticides-incorporated-into-fabrics-and-housewares-are-hazardous-and-not-adequately-regulated/>

If you plan to give socks, sweatshirts, or other items of clothing as holiday gifts, you need to be aware that many such items are treated with toxic chemicals. Such treated items may be labeled as “odor free” and may contain nanosilver, triclosan (banned in soaps, but allowed in textile and household products), or other (undisclosed) chemicals hiding behind brand names such as Microban® or FreshIQ. Since it is not always possible to determine which chemical may be used in these textiles, the best option is to buy clothing that is organic or made locally.

The Environmental Protection Agency (EPA) exempts treated articles from registration requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Although the chemicals themselves may be registered antimicrobial pesticides, the treated products in which they are found—and which expose the public to them—are not considered pesticides. Besides clothing treated with antimicrobials to control odors, EPA also allows seeds, wood, paints, cutting boards, sponges, mops, and even toothbrushes to be treated with antimicrobial pesticides under the exemption—as long as claims made for the treatment only pertain to protecting the treated article. For example, sock manufacturers may claim that the treated socks won’t stink but may not claim that they will protect the wearer from athlete’s foot.

Failure to regard treated articles as pesticides has serious implications. Manufacturers are not required to reveal the actual chemicals to which consumers are exposed. Studies have found that, when impregnated into textiles like sportswear, nanosilver does not just wash out in the washing machine, it can also seep into a person’s sweat and end up being absorbed into the skin. The size of nanosilver means that it can easily pass into the body’s blood and lymph system, and circulate through sensitive areas such as the brain, liver, and heart. Triclosan has been linked to a range of health and environmental effects, from skin irritation, allergy susceptibility, bacterial and compounded antibiotic resistance, and dioxin contamination to destruction of fragile aquatic ecosystems.

EPA does not evaluate the effects of exposure to these fabrics. It does not apply the risk-benefit standard in FIFRA to these uses. It simply considers them outside of the scope of pesticide regulation.

Tell EPA to regulate pesticide-treated articles as pesticides, examining alternatives and requiring labels.

Letter to EPA (Office of Pesticide Programs and Administrator Regan)

Please remove the exemption for registration of pesticide treated articles (PR-2000-1). Treated articles pose uncontrolled threats to human health and the environment. EPA is not deciding to allow such uses based on FIFRA’s risk-benefit standard but is applying an arbitrary criterion based on the advertising claims of purveyors of treated articles.

Who decides that the benefits of seeds coated with neonicotinoid insecticides outweigh the risk of an apocalyptic collapse of insect populations? Who decides that the benefits of wood impregnated with toxic copper compounds outweigh the risks to workers and those using treated wood? How does EPA justify ignoring the risks to consumers of cutting boards, toothbrushes, socks, and underwear exposed to toxic antimicrobial chemicals?

None of these decisions should be made in the absence of data. None should be made in the absence of a showing of need (“benefits”) of the pesticide. Certainly, none of these uses should be allowed without full and transparent disclosure to the consumer of the chemical—not a brand name whose properties cannot be determined.

In other words, all such “treated articles” should be required to be registered as pesticides.

EPA Puts Natural Gas Facilities on its “Naughty” List for 2022

Daniel L Klein, Lexology (Goldberg Segalla)

<https://www.lexology.com/library/detail.aspx?g=baa43944-5614-4a67-92e2-1dd21540e375>

The Environmental Protection Agency (EPA) is moving to include natural gas processing (NGP) facilities, also referred to as “natural gas liquid extraction facilities”, to the expanding list of industry groups obligated to report releases of specific chemicals pursuant to the reporting requirements of Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), commonly known as the Toxics Release Inventory (TRI).

The TRI requires certain industrial entities that create, manufacture, or otherwise use certain identified chemicals including hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol, to report yearly statistics of such chemicals entering local soil, water, or plant or animal ecosystems. These entities are also required to report pollution prevention and recycling data.

This new forceful push by the EPA to include NGPs in the TRI marks the culmination of a decade-long political tug-of-war, started in 2012 when environmental groups petitioned the EPA to add the oil and gas extraction industry sector to the scope of the TRI program. The EPA rejected most of the proposal in 2015, but the Obama administration reconsidered in 2017 and tacitly agreed to the inclusion of NGPs. The initiative was put on hold during the Trump administration but revived by the Biden administration on November 24, 2021..

Industry insiders and opponents of the initiative criticize it on a number of grounds, including claims that the EPA has miscalculated the toll on the industrial entities to be regulated, that this new rule will cause confusion as to what constitutes a “facility” subject to the rule, whether certain facilities fall within the industry codes identified in the rule, and that much of the data that will be reported is already in the public domain.

The rule takes effect on December 27, 2021, proactively applies to calendar year 2022, and has a reporting deadline of July 1, 2023.

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